

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 96-047-C - ORDER NO. 96-619
SEPTEMBER 6, 1996

IN RE: Application of Cable & Wireless, Inc.)
 for Alternative Regulation.)
) ORDER DENYING
) PETITION FOR
) REHEARING AND
) RECONSIDERATION

This matter comes before the Public Service Commission of South Carolina ("the Commission") on the Petition for Rehearing and Reconsideration of Commission Order No. 96-493 ("Petition") filed by the Consumer Advocate for the State of South Carolina (the "Consumer Advocate"). Commission Order No. 96-493 granted modified or "relaxed" regulation of the business service offerings of Cable & Wireless, Inc. ("C&W") The modified regulation that was granted by Order No. 96-493 is identical to the relaxed regulation that was granted to AT&T Communications of the Southern States, Inc. ("AT&T") by Commission Order Nos. 95-1734 and 96-55 in Docket No. 95-661-C. For the reasons stated below, the Consumer Advocate's Petition must be denied.

The Consumer Advocate first asserts that the Commission's decision in Order No. 96-493 has violated the provisions of S.C. Code Ann. §58-9-585 (Supp. 1995). Petition, p. 2, para. 4. The Consumer Advocate argues that the "only means by which the Commission may choose to 'not fix or prescribe the rates, tolls, charges, or rate structures' for a telecommunications service of

an interexchange telecommunications carrier" is pursuant to S.C. Code Ann. §58-9-585 (Supp. 1995). The Consumer Advocate argues that the Commission's action in Order No. 96-493 improperly provides relief for C&W's business services under a procedure other than that set forth in S.C. Code Ann. §58-9-585.

The Commission finds no error by its decision in Order No. 96-493. By its statutory authority and regulatory responsibility, the Commission" is vested with power and jurisdiction to supervise and regulate the rates and service of every public utility in this State and to fix just and reasonable standards, classifications, regulations, practices, and measurements of service to be furnished, imposed, or observed, and followed by every public utility in this State." S.C. Code Ann. §58-3-140 (Supp. 1995). Further, S.C. Code Ann. §58-9-720 (1976) provides in relevant part that "[t]he Commission may, upon its own Motion ..., ascertain and fix just and reasonable classifications, regulations, practices or service to be furnished, imposed, observed and followed by any and all telephone utilities ..."

As was stated in Commission Order No. 96-55, the price cap regulation, which was modified by Order No. 95-1734, was not instituted pursuant to any specific statute such as S.C. Code Ann. §58-9-585 (Supp. 1995) but was instituted by Commission Order No. 84-622 (dated August 2, 1984). Order No. 84-622 was not overturned on appeal and is therefore the law under which interexchange carriers have been operating since 1984. The Commission certainly has authority to modify a practice which the Commission instituted by Commission Order originally. The

Commission therefore finds no merit in the Consumer Advocate's argument.

In a similar vein, the Consumer Advocate asserts that the Commission has exceeded its statutory authority because S.C. Code Ann. §58-9-585 (Supp. 1995) is the only authority under which the Commission may choose to remove price caps for services provided by an interexchange carrier. Petition, p. 2, para. 5. As quoted above, the Commission is granted general regulatory authority, and under that general regulatory authority, the Commission may "ascertain and fix just and reasonable classifications, regulations, practices or service to be furnished, imposed, observed and followed ..." S.C. Code Ann. §58-9-720 (1976). The Commission believes that it has the authority to modify its prior Orders and denies reconsideration and rehearing on the argument.

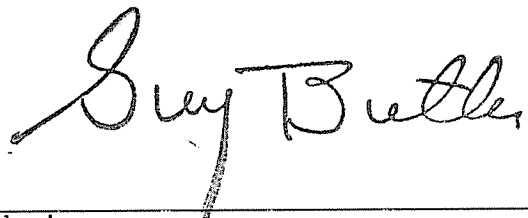
The Consumer Advocate further argues that S.C. Code Ann. §58-8-585 (Supp. 1995) is a later enacted statute and is specific legislation which would supersede the Commission's general authority. Petition, p. 2, para. 5. By Order 95-1734, the Commission has not released its regulatory control over the business services of C&W, as envisioned by S.C. Code Ann. §58-9-582(B) (Supp. 1995). While the Commission has allowed the price caps to be removed, the Commission will continue to regulate C&W and to enforce S.C. Code Ann. §58-9-210 (1976) which requires that all telephone utility rates be just and reasonable. The Commission believes that it has properly exercised its authority, and therefore, the Commission rejects the Consumer Advocate's second ground for rehearing and reconsideration.

Finally, the Commission notes that C&W's original Petition does not ask for relief under S.C. Code Ann. §58-9-585 (Supp. 1995) but requests that its business service offerings be regulated pursuant to the procedures established in Commission Orders No. 95-1734 and 96-55 in Docket No. 95-661-C. Therefore, C&W never requested relief under S.C. Code Ann. §58-9-585 (Supp. 1995) but chose to request relief under the regulatory scheme as described and granted to C&W by Order No. 96-493. The Commission therefore believes that S.C. Code Ann. §58-9-585 (Supp. 1995) need not be applied in this proceeding.

Because of the reasoning stated above, the Commission therefore denies the Consumer Advocate's request for rehearing and reconsideration of Order No. 96-493.

This Order shall remain in full force and effect until further Order of the Commission.

BY ORDER OF THE COMMISSION:



Chairman

ATTEST:



Deputy Executive Director

(SEAL)

DISSENTING OPINION OF COMMISSIONER WARREN D. ARTHUR IV:

I respectfully dissent from the majority decision in this docket. As part of its Application, Cable & Wireless, Inc., requested regulatory treatment similar to that granted to AT&T in Order Nos. 95-1734 and 96-55 (Docket No. 95-661-C). I disagreed with the majority decision to grant "relaxed regulation" in that docket and also object to the Commission's grant of it in this instance.

As I have previously stated, I believe that alternative regulation should be granted to a company under South Carolina Code Annotated Section 58-9-585 only if the company has satisfied the requirements of that statute. This section is the specific statutory authority which allows the grant of alternative regulation. The majority's grant of alternative regulation to AT&T, Bell Atlantic, and now Cable & Wireless, via other means, is strained. Since I believed the relaxed regulation was improvidently granted in these other dockets, I must also disagree with the grant of it now to Cable & Wireless, Inc.



Warren D. Arthur IV
Commissioner, Sixth District